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BEFORE THE ARIZONA CORPORATION COMMISSION**COMMISSIONERS**

Arizona Corporation Commission

DOCKETED

ROBERT "BOB" BURNS - Chairman
BOYD DUNN
SANDRA D. KENNEDY
JUSTIN OLSON
LEA MÁRQUEZ PETERSON

OCT 24 2019

DOCKETED BY

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In the matter of

THEODORE W. FOWLER and SHANA C.
FOWLER, husband and wife,WHISPERING CREEK INVESTMENTS
LLC, an Arizona limited liability company,

Respondents.

DOCKET NO. S-21076A-19-0100

DECISION NO. 77427**ORDER TO CEASE AND DESIST, ORDER
FOR RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES AND
CONSENT TO SAME****BY: THEODORE W. FOWLER, SHANA C.
FOWLER, AND WHISPERING CREEK
INVESTMENTS LLC**

Respondents Theodore W. Fowler, Shana C. Fowler, and Whispering Creek Investments LLC (collectively, "Respondents") elect to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties, and Consent to Same ("Order"). Respondents admit the jurisdiction of the Arizona Corporation Commission ("Commission"); admit only for purposes of this proceeding and any other proceeding in which the Commission is a party, the Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by the Commission.

I.**FINDINGS OF FACT**

1. Whispering Creek Investments LLC ("WCI") is a manager-managed limited liability company that was organized under the laws of the state of Arizona in January of 2012. WCI has not been registered with the Commission as a securities salesman or dealer.

2. At all times relevant, Theodore W. Fowler ("Fowler") has been married to Shana C. Fowler, and both are residents of Arizona. Fowler is the sole manager and statutory agent for WCI. Fowler has not been registered with the Commission as a securities salesman or dealer.

3. From February 21, 2014, through May 31, 2017, Fowler was licensed in the state of Arizona as an insurance producer. Since May 3, 2017, Fowler has been licensed in the state of Arizona as a real estate salesperson.

4. Shana C. Fowler was at all relevant times the spouse of Fowler and may be referred to as "Respondent Spouse." Respondent Spouse is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

5. At all times relevant, Fowler has been acting for his own benefit and for the benefit or in furtherance of Fowler's and Respondent Spouse's marital community.

6. On July 2, 2010, Fowler and Respondent Spouse filed for protection under Chapter-7 of the U.S. Bankruptcy Code, in Arizona. Fowler and Respondent Spouse's schedules listed \$628,448.12 of unsecured claims and \$460,000 of secured claims. On October 28, 2010, the bankruptcy ("2010 Bankruptcy") was discharged.

7. In 2012, Fowler formed WCI for the purpose of investing in real estate. WCI's main business objective was "to identify, purchase, improve, and sell real estate for a profit." WCI invested in "residential remodels, newly built structures ... and raw land with the intent of building new single-family residences." WCI generally financed "the purchase of the investment properties" through loans from "individuals and entities."

8. From at least December of 2014, until at least March of 2017, Respondents Fowler and WCI offered and sold securities in the form of investment contracts and/or promissory notes ("Notes") within or from Arizona to at least eight investors (collectively, "Investors"), of which at least seven of the Investors were Arizona residents. The Investors collectively invested \$1,987,582.19. Respondents Fowler and WCI represented they were raising capital to fund "fix and flip real estate transaction(s)" and/or to fund a "new build real estate transaction," in Arizona.

2014 Never Mind Trail Investment

9. On or about December of 2014, Fowler contacted at least two Investors and offered both an opportunity to invest in a specified parcel of raw land ("Never Mind Trail") located in Carefree, Arizona. Fowler offered both Investors 12% interest plus return of principal. Fowler represented to both Investors that their investment funds would be used to purchase the Never Mind Trail property and build two custom homes on the property. Fowler further represented that each residence (once built) would be sold for a profit. Based on Fowler's representations, both Investors decided to invest in the Never Mind Trail investment ("2014 Never Mind Trail Investment").

10. From December 1, 2014, through December 11, 2014, both Investors collectively invested \$409,882.19 for a promised 12% return on investment and return of their principal investments. One Investor rolled over \$52,082.19 from his returns on a previous investment with Respondents Fowler and WCI, and both Investors wired their investment funds to WCI's business account held with an Arizona credit union, to fund the investments. During the relevant time-period, Fowler was the sole signer of WCI's business account. Shortly thereafter, Fowler informed both Investors that he needed to raise more capital and was going to bring in more Investors to fund the 2014 Never Mind Trail Investment.

11. On or about December 23, 2014, Respondents Fowler and WCI raised \$331,700 in additional investment capital from two other Investors for the 2014 Never Mind Trail Investment. The new Investors were given escrow instructions to wire their funds to a title company, based in Arizona, for the 2014 Never Mind Trail Investment.

12. On December 23, 2014, Fowler as the "Owner" of WCI, executed an investment contract and/or Note (hereinafter, "2014 Note"), which listed WCI as the "Borrower," and the four Investors ("2014 Never Mind Trail Investors") as the "Lender." The 2014 Never Mind Trail Investors' only role in the 2014 Never Mind Trail Investment was to provide capital. The success of the investment depended solely on Respondents Fowler's and WCI's efforts to purchase the Never Mind Trail property, build two single-family residences, and sell each residence for a profit.

13. The 2014 Note provided as follows:

- The Borrower (WCI) promised to pay Lender the principal amount of all advances made by Lender to Borrower hereunder, not to exceed \$741,582.19;
- This Note was set up to be paid in deferred payments. All principal and interest payments would be due upon sale of the described property. "On or before December 29th, 2014," Borrower would pay deferred payments of interest calculated at 12% on the full loan amount of \$741,582.19;
- The entire unpaid balance of all advances plus interest was immediately due and payable to the Lender within **TWELVE MONTHS (12). The maturity date was December 29, 2015** [emphasis is original];"
- The Lender was funding a fix and flip real estate transaction;
- The loan was to be in first (1st) position;
- In the event the Lender received any installment on or after the 5th day of the month after the initial 12-month period, then the Borrower would pay in addition a late charge in the amount of \$25.00 per day;
- Borrower would be in default if: Borrower failed to make any payment within five days of the date due; Borrower broke any promise he made to Lender; or Borrower failed to comply with or perform when due any other term, obligation, covenant, or conditioned contained in this Note or any agreement related to this Note;
- "Upon default, Lender may, after giving such notice as required by applicable law, declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due," and then Borrower would pay that amount; and
- Borrower agreed to the terms of the Note.

14. On December 29, 2014, Respondents Fowler and WCI recorded a deed of trust in connection to the 2014 Note, with the Maricopa County Recorder's Office.

1 15. On or about December 29, 2014, WCI purchased the Never Mind Trail property for
2 \$390,000 and paid an additional \$11,686.43 in settlement charges, taxes, and fees (total of
3 \$401,686.43).

4 16. Respondents Fowler and WCI raised \$741,582.19 in investment capital from the 2014
5 Never Mind Trail Investors and purchased the Never Mind Trail property for a total of \$401,686.43,
6 leaving a remainder of \$339,895.76 of the 2014 Never Mind Trail Investors' funds left to go towards
7 construction-related costs for building two single-family homes on the Never Mind Trail property.

8 17. However, Respondents Fowler and WCI used a portion of some of the 2014 Never
9 Mind Trail Investors' funds on the Respondents Fowler's and WCI's other fix and flip properties that
10 were unrelated to the 2014 Never Mind Trail Investment, and on other expenses, which was contrary
11 to the Respondents Fowler's and WCI's representation to some of the 2014 Never Mind Trail
12 Investors that their investment funds would be used to purchase the Never Mind Trail property and
13 build two single-family residences on the property.

14 18. On December 29, 2015, the 2014 Note matured. During the relevant time-period,
15 Respondents Fowler and WCI failed to pay any of the 2014 Never Mind Trail Investors their
16 promised 12% interest.

17 **2016 Dove Valley Investment**

18 19. In October of 2011, Fowler and Respondent Spouse purchased a residential property
19 ("Dove Valley") located in Cave Creek, Arizona. During the relevant time-period, the Dove Valley
20 property was Fowler's and Respondent Spouse's personal residence.

21 20. In 2016, Fowler contacted an Investor and represented that she should invest some of
22 her retirement funds into a fix and flip investment, identified as the Dove Valley property. Fowler
23 represented to the Investor that she would get "12% interest paid back to her monthly for one year
24 and then the original investment would be paid back." Fowler contacted another Investor (who had
25 previously invested in other fix and flips with Respondents Fowler and WCI) and offered him an
26 opportunity to invest in the fix and flip of the Dove Valley property, for a promised 12% return on

1 investment, and return of his principal investment. Fowler represented to both Investors that their
2 funds would be used to fix and flip the Dove Valley property.

3 21. However, Fowler failed to disclose to the Investors that the Dove Valley property was
4 Fowler and Respondent Spouse's personal residence.

5 22. Based on Fowler's representations, both Investors ("Dove Valley Investors") decided
6 to invest in the Dove Valley property. Between April of 2016, and November of 2016, the Dove
7 Valley Investors collectively invested \$414,000 for a promised 12% return on investment ("Dove
8 Valley Investment"). Both Dove Valley Investors' investment funds were deposited into WCI's
9 business account and/or another business account, in which Fowler was the sole signer.

10 23. On November 3, 2016, Fowler as the "Owner" of WCI, executed an investment
11 contract and/or Note (hereinafter, "Dove Valley Note"), which listed WCI as the "Borrower," and
12 the Dove Valley Investors as the "Lender." The Dove Valley Investors' only role in the Dove Valley
13 Investment was to provide capital. The success of the investment depended solely on Respondents
14 Fowler's and WCI's efforts to fix and flip the Dove Valley property for a profit.

15 24. The Dove Valley Note provided as follows:

- 16 • The Borrower (WCI) promised to pay Lender the principal amount of all advances
17 made by Lender to Borrower hereunder, not to exceed \$414,000;
- 18 • This Note was set up to be paid in deferred payments. All principal and interest
19 payments would be due upon sale of the described property. "On or before November
20 3rd, 2016," Borrower would pay deferred payments of interest calculated at 12% on
21 the full loan amount of \$414,000;
- 22 • The entire unpaid balance of all advances plus interest was immediately due and
23 payable to the Lender within **TWELVE MONTHS (12). The maturity date was**
24 **November 3, 2017** [emphasis is original];
- 25 • The Lender was funding a fix and flip real estate transaction;
- 26 • The loan was to be in second (2nd) position;

- 1 • In the event the Lender received any installment on or after the 5th day of the month
- 2 after the initial 12-month period, then the Borrower would pay in addition a late
- 3 charge in the amount of \$25.00 per day;
- 4 • Borrower would be in default if: Borrower failed to make any payment within five
- 5 days of the date due; Borrower broke any promise he made to Lender; or Borrower
- 6 failed to comply with or perform when due any other term, obligation, covenant, or
- 7 conditioned contained in this Note or any agreement related to this Note;
- 8 • “Upon default, Lender may, after giving such notice as required by applicable law,
- 9 declare the entire unpaid principal balance on this Note and all accrued unpaid interest
- 10 immediately due,” and then Borrower would pay that amount;
- 11 • Borrower agreed to the terms of the Note.

12 25. On May 25, 2017, Respondents Fowler and WCI recorded a deed of trust in
13 connection to the Dove Valley Note, with the Maricopa County Recorder’s Office.

14 26. Respondents Fowler and WCI used a portion of the Dove Valley Investors’ funds on
15 the Respondents Fowler’s and WCI’s other fix and flip properties that were unrelated to the Dove
16 Valley Investment and withdrew funds for purposes unrelated to the Dove Valley Investment, which
17 was contrary to Fowler’s representation to the Dove Valley Investors that their investment funds
18 would be used to fix and flip the Dove Valley property.

19 **2017 Never Mind Trail Investment**

20 27. From at least December of 2016, through at least March of 2017, Respondents Fowler
21 and WCI offered additional investment opportunities in the Never Mind Trail property (“2017 Never
22 Mind Trail Investment”) to at least six Investors, of which three of the Investors had previously
23 invested in the 2014 Never Mind Trail Investment. Fowler represented to at least five of the Investors
24 that he was raising investment capital to fund the construction costs to build two single-family homes
25 on the Never Mind Trail property, and he promised a 12% return of investment, and return of
26 principal investments. Fowler further represented to at least five of the Investors that their investment

1 funds would be used for costs related to building two single-family homes on the Never Mind Trail
2 property.

3 28. In December of 2016, Fowler contacted an Investor (who had previously invested in
4 other fix and flips investments with Respondents Fowler and WCI) and Fowler represented that he
5 owned the Never Mind Trail property and was raising investment capital to build two single-family
6 homes on the property. However, Respondents Fowler and WCI failed to disclose: that the 2014
7 Never Mind Trail Investors' funds were used to purchase the property; the 2014 Never Mind Trail
8 Investors still held a deed of trust on the property; and the 2014 Never Mind Trail Investors did not
9 receive any returns and/or only received partial returns on their investments and did not receive their
10 principal investments back.

11 29. Based on Fowler's representations, the above-mentioned Investor decided to invest
12 \$60,000. A couple of months later, Fowler contacted the Investor and represented he needed "more
13 money to keep the Never Mind project on track." The Investor agreed to invest an additional
14 \$100,000.

15 30. In December of 2016, Fowler offered another Investor an opportunity to invest in the
16 Never Mind Trail property. Fowler represented to the Investor that the Never Mind Trail Property
17 was already paid in full, and that he was building two houses on the property that would be valued at
18 \$1.5 million each. Fowler further represented that "there were no risks at all and guaranteed ... 12%
19 annually." Contrary to those statements, Respondents Fowler and WCI failed to disclose to the
20 Investor that the 2014 Never Mind Trail Investors still held a deed of trust on the property, and the
21 2014 Never Mind Trail Investors did not receive any returns and/or only received partial returns on
22 their investments and did not receive their principal investments back.

23 31. Fowler presented himself as very successful to above-mentioned Investor. However,
24 Fowler failed to disclose his 2010 Bankruptcy to the Investor. Based on Fowler's representations, the
25 Investors decided to invest \$188,000. A few months later, the Investor invested an additional
26 \$203,000.

1 32. In January of 2017, Fowler contacted at least two of the 2014 Never Mind Trail
2 Investors and represented that he needed more money to start construction on the Never Mind Trail
3 property. At least one of the Investors informed Fowler that they did not have additional funds to
4 invest in the project. Fowler represented to both Investors that he was going to bring in more Investors
5 and pool all the investment funds together to build the residences.

6 33. Between January 11, 2017, and January 13, 2017, all four of the 2014 Never Mind
7 Trail Investors recorded a deed of release and full reconveyance with the Maricopa County
8 Recorder's Office. Three of the 2014 Never Mind Trail Investors rolled over investment funds from
9 their 2014 Never Mind Trail Investments and/or invested additional funds into the 2017 Never Mind
10 Trail Investment. Months later, the remaining 2014 Never Mind Trail Investor received her promised
11 return on investment, including her principal investment back.

12 34. On or about January 19, 2017, Fowler contacted another Investor (who had previously
13 invested in other fix and flips investments with Respondents Fowler and WCI) and represented that
14 he owned the Never Mind Trail property, and he needed money to build two custom homes on the
15 property and sell each for a profit. However, Respondents Fowler and WCI failed to disclose to the
16 Investor that the 2014 Never Mind Trail Investors did not receive any returns and/or only received
17 partial returns on their investments and did not receive their principal investments back. Based on
18 Fowler's representations, the Investors invested \$150,000.

19 35. In total, six Investors ("2017 Never Mind Trail Investors") collectively invested
20 \$1,279,882.19 in the 2017 Never Mind Trail Investment. The 2017 Never Mind Trail Investors' funds
21 were deposited into WCI's business and/or their funds were rolled over from the 2014 Never Mind
22 Trail Investment.

23 36. On March 21, 2017, Fowler as the "Owner" of WCI, executed an investment contract
24 and/or Note (hereinafter, "2017 Note"), which listed WCI as the "Borrower," and the six 2017 Never
25 Mind Trail Investors as the "Lender." The 2017 Never Mind Trail Investors' only role in the 2017
26 Never Mind Trail Investment was to provide capital. The success of the investment depended solely

1 on Respondents Fowler's and WCI's efforts to build two single-family homes on the property and
2 sell each home for a profit.

3 37. The 2017 Note provided as follows:

- 4 • The Borrower (WCI) promised to pay Lender the principal amount of all advances
5 made by Lender to Borrower hereunder, not to exceed \$1,279,882.19;
- 6 • This Note was set up to be paid in deferred payments. All principal and interest
7 payments would be due upon sale of the described property. "On or before December
8 1st, 2018," Borrower would pay deferred payments of interest calculated at 12% on
9 the full loan amount of \$1,279,882.19;
- 10 • The entire unpaid balance of all advances plus interest was immediately due and
11 payable to the Lender within **TWENTY-FOUR MONTHS (24). The maturity date**
12 **was December 1, 2018** [emphasis is original];
- 13 • The Lender was funding a new build real estate transaction;
- 14 • The loan was to be in first (1st) position;
- 15 • In the event the Lender received any installment on or after the 5th day of the month
16 after the initial 12-month period, then the Borrower would pay in addition a late
17 charge in the amount of \$25.00 per day;
- 18 • Borrower would be in default if: Borrower failed to make any payment within five
19 days of the date due; Borrower broke any promise he made to Lender; or Borrower
20 failed to comply with or perform when due any other term, obligation, covenant, or
21 conditioned contained in this Note or any agreement related to this Note;
- 22 • "Upon default, Lender may, after giving such notice as required by applicable law,
23 declare the entire unpaid principal balance on this Note and all accrued unpaid interest
24 immediately due," and then Borrower would pay that amount;

25 38. Borrower agreed to the terms of the Note.
26

1 39. On March 24, 2017, Fowler used a portion of the 2017 Never Mind Trail Investors'
2 investment funds and wired \$334,443.85, which included a \$70,743.85 interest payment, from WCI's
3 business account to a 2014 Never Mind Trail Investor [who did not invest in the 2017 Never Mind
4 Trail Investment], which was contrary to Fowler's representation that the 2017 Never Mind Trail
5 Investors' funds would be used to build two homes on the Never Mind Trail property.

6 40. On May 24, 2017, a deed of trust in connection to the 2017 Note was recorded with
7 the Maricopa County Recorder's Office.

8 41. In January of 2018, Fowler contacted several of the 2017 Never Mind Trail Investors
9 and represented that their investment funds were "gone" and he "made bad choices ... and didn't
10 have enough money to build on the property [even though the land was still raw, and no construction
11 had taken place]."

12 42. On December 1, 2018, the 2017 Note matured. Since then, the 2017 Never Mind Trail
13 Investors have not received their promised 12% interest and have only received a portion of their
14 principal investments back.

15 43. Respondents Fowler and WCI used a portion of the 2017 Never Mind Trail Investors'
16 funds on Respondents Fowler's and WCI's other fix and flip properties that were unrelated to the
17 2017 Never Mind Trail Investment, on other expenses, and to pay a 2014 Never Mind Trail Investor
18 [who did not invest in the 2017 Never Mind Trail Investment], which was contrary to Fowler's
19 representation to some of the 2017 Never Mind Trail Investors that their investment funds would be
20 used to build two single-family homes on the Never Mind Trail property.

21 44. The 2014 Never Mind Trail Investors, the Dove Valley Investors, and the 2017 Never
22 Mind Trail Investors collectively invested \$1,987,582.19 and have only received back \$822,658.42.
23 The remaining principal owed is \$1,164,923.77.

24 **Misrepresentations and Omissions of Material Facts**

25 45. Respondents Fowler and WCI misrepresented to some of the 2014 Never Mind Trail
26 Investors that their funds would be used to purchase the Never Mind Trail property and build two

1 single-family homes on the property; when in fact, Respondents Fowler and WCI used a portion of
2 the funds on other fix and flip properties that were unrelated to the 2014 Never Mind Trail
3 Investment, and on personal expenses.

4 46. Respondents Fowler and WCI misrepresented to the Dove Valley Investors that their
5 investment funds would be used to fix and flip the Dove Valley property, when in fact, Respondents
6 Fowler and WCI used a portion of the funds on their other fix and flip properties that were unrelated
7 to the Dove Valley Investment, and withdrew funds for a purpose unrelated to the Dove Valley
8 Investment.

9 47. In December of 2016, Fowler misrepresented to at least one of the 2017 Never Mind
10 Trail Investors by stating that she would receive 12% annually, when in fact, during that relevant
11 time-period, the 2014 Never Mind Trail Investors did not receive any return and/or received partial
12 returns on their investments and did not receive their principal investments back.

13 48. Respondents Fowler and WCI misrepresented to some of the 2017 Never Mind Trail
14 Investors that their investment funds would be used to build two single-family homes on the Never
15 Mind Trail property, when in fact, Respondents Fowler and WCI used a portion of the funds on their
16 other fix and flip properties unrelated to the Never Mind Trail property, on other expenses, and to
17 pay off a 2014 Never Mind Trail Investor [who did not invest in the 2017 Never Mind Trail
18 Investment].

19 49. During the relevant time-period, Respondents Fowler and WCI failed to disclose to
20 the Dove Valley Investors that the Dove Valley property was Fowler's personal residence.

21 50. During relevant time-period, Respondents Fowler and WCI represented to some of the
22 2017 Never Mind Trail Investors that they were raising investment capital to build homes on the Never
23 Mind Trail property to later sell for a profit. However, Respondents Fowler and WCI failed to disclose
24 to them that the 2014 Never Mind Trail Investors did not receive any returns and/or only received
25 partial returns on their investments and did not receive their principal investments back.
26

51. Fowler informed at least one of the 2017 Never Mind Trail Investors that he was very successful. However, Fowler failed to disclose his 2010 Bankruptcy to the Investor.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. Respondents Theodore W. Fowler and Whispering Creek Investments LLC offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(16), 44-1801(22), and 44-1801(27).

3. Respondents Theodore W. Fowler and Whispering Creek Investments LLC violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

4. Respondents Theodore W. Fowler and Whispering Creek Investments LLC violated A.R.S. § 44-1842 by offering or selling securities while neither registered as a dealer or salesman nor exempt from registration.

5. Respondents Theodore W. Fowler and Whispering Creek Investments LLC violated A.R.S. § 44-1991.

6. Respondents Theodore W. Fowler's and Whispering Creek Investments LLC's conduct are grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

7. Respondents Theodore W. Fowler's and Whispering Creek Investments LLC's conduct are grounds for an order of restitution pursuant to A.R.S. § 44-2032.

8. Respondents Theodore W. Fowler's and Whispering Creek Investments LLC's conduct are grounds for administrative penalties under A.R.S. § 44-2036.

9. Respondent Theodore W. Fowler acted for his own benefit and on behalf of and for the benefit of the Respondent Theodore W. Fowler's and Respondent Spouse's marital community. This order of restitution and administrative penalties is a debt of the community.

10. Respondent Theodore W. Fowler directly or indirectly controlled persons or entities within the meaning of A.R.S. § 44-1999, including but not limited to Respondent Whispering Creek Investments LLC. Therefore, Respondent Theodore W. Fowler is jointly and severally liable under A.R.S. § 44-1999 to the same extent as Respondent Whispering Creek Investments LLC for any violations of A.R.S. § 44-1991.

III.

ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondents' consent to the entry of this Order, attached and incorporated by reference, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondents Theodore W. Fowler and Whispering Creek Investments LLC, and any of Respondents Theodore W. Fowler's and Whispering Creek Investments LLC's agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED that Respondents comply with the attached Consent to Entry of Order.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondent Theodore W. Fowler, as his sole and separate obligation, and Respondents Theodore W. Fowler and Respondent Spouse, as a community obligation, shall, jointly and severally with Respondent Whispering Creek Investments LLC pay restitution to the Commission in the principal amount of \$1,164,923.77, minus any offsets, as a result of the conduct set forth in the Findings of Fact and Conclusions of Law. Payment is due in full on the date of this Order. Payment shall be made to the "State of Arizona" to be placed in an interest-bearing account controlled by the Commission. Any principal amount outstanding shall accrue interest at the rate of ten percent per annum from the date of purchase until the date of this order.

1 IT IS FURTHER ORDERED that the restitution ordered in the preceding paragraph will
2 accrue interest, as of the date of the Order, at the rate of the lesser of (i) ten percent per annum or (ii)
3 at a rate per annum that is equal to one per cent plus the prime rate as published by the board of
4 governors of the federal reserve system in statistical release H. 15 or any publication that may
5 supersede it on the date that the judgment is entered.

6 The Commission shall disburse the funds on a pro-rata basis to investors shown on the records
7 of the Commission. Any restitution funds that the Commission cannot disburse because an investor
8 refuses to accept such payment, or any restitution funds that cannot be disbursed to an investor
9 because the investor is deceased shall be disbursed on a pro-rata basis to the remaining investors
10 shown on the records of the Commission. Any funds that the Commission determines it is unable to
11 or cannot feasibly disburse shall be transferred to the general fund of the state of Arizona.

12 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondent Theodore W.
13 Fowler, as his sole and separate obligation, and Respondents Theodore W. Fowler and Respondent
14 Spouse, as a community obligation shall, jointly and severally with Respondent Whispering Creek
15 Investments LLC pay an administrative penalty in the amount of \$50,000 as a result of the conduct
16 set forth in the Findings of Fact and Conclusions of Law. Payment is due in full on the date of this
17 Order. Payment shall be made to the "State of Arizona." Any amount outstanding shall accrue interest
18 as allowed by law.


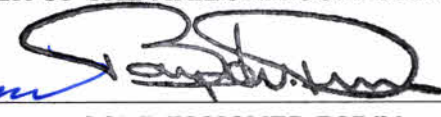

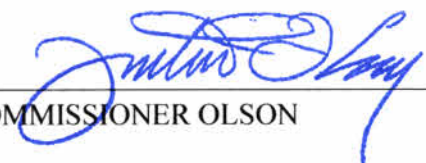
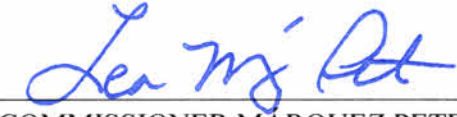
19 IT IS FURTHER ORDERED that payments received by the state of Arizona shall first be
20 applied to the restitution obligation. Upon payment in full of the restitution obligation, payments
21 shall be applied to the penalty obligation.

22 For purposes of this Order, a bankruptcy filing by Respondents shall be an act of default. If
23 Respondents do not comply with this Order, any outstanding balance may be deemed in default and
24 shall be immediately due and payable.

1 IT IS FURTHER ORDERED, that if Respondents fail to comply with this order, the
2 Commission may bring further legal proceedings against Respondents, including application to the
3 superior court for an order of contempt.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

6   
7 CHAIRMAN BURNS COMMISSIONER DUNN COMMISSIONER KENNEDY
8
9  
10 COMMISSIONER OLSON COMMISSIONER MARQUEZ PETERSON



11 IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT,
12 Executive Director of the Arizona Corporation Commission,
13 have hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this 24 day of October, 2019.

16 
17 MATTHEW J. NEUBERT
18 EXECUTIVE DIRECTOR

19
20 DISSENT

21
22 DISSENT

23 This document is available in alternative formats by contacting Kacie Cannon, ADA Coordinator,
24 voice phone number (602) 542-3931, e-mail kcannon@azcc.gov.

25 (MS)
26

CONSENT TO ENTRY OF ORDER

1
2 1. Respondents Theodore W. Fowler, Shana C. Fowler, and Whispering Creek
3 Investments LLC (each individual a “Respondent” or collectively “Respondents”) admit the
4 jurisdiction of the Commission over the subject matter of this proceeding. Respondents acknowledge
5 that Respondents have been fully advised of Respondents’ right to a hearing to present evidence and
6 call witnesses and Respondents knowingly and voluntarily waive any and all rights to a hearing
7 before the Commission and all other rights otherwise available under Article 11 of the Securities Act
8 and Title 14 of the Arizona Administrative Code. Respondents acknowledge that this Order to Cease
9 and Desist, Order for Restitution, Order for Administrative Penalties, and Consent to Same (“Order”)
10 constitutes a valid final order of the Commission.

11 2. Respondents knowingly and voluntarily waive any right under Article 12 of the
12 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief resulting
13 from the entry of this Order.

14 3. Respondents acknowledge and agree that this Order is entered into freely and
15 voluntarily and that no promise was made or coercion used to induce such entry.

16 5. Respondents Theodore W. Fowler, Shana C. Fowler, and Whispering Creek
17 Investments LLC acknowledge that they have been represented by an attorney in this matter,
18 Respondents Theodore W. Fowler, Shana C. Fowler, and Whispering Creek Investments LLC have
19 reviewed this order with their attorney, Alan Baskin of Baskin Richards PLC, and understand all
20 terms it contains. Respondents Theodore W. Fowler, Shana C. Fowler, and Whispering Creek
21 Investments LLC acknowledge that their attorney has apprised them of their rights regarding any
22 conflicts of interest arising from joint representation. Respondents Theodore W. Fowler, Shana C.
23 Fowler, and Whispering Creek Investments LLC acknowledge that they have each given their
24 informed consent to such representation.

25 6. Respondents admit only purposes of this proceeding and any other proceeding in
26 which the Commission is a party, the Findings of Fact and Conclusions of Law contained in this

1 Order. Respondents agree that they shall not contest the validity of the Findings of Fact and
2 Conclusions of Law contained in this Order in any present or future proceeding in which the
3 Commission is a party.

4 7. Respondents further agree that they shall not deny or contest the Findings of Fact and
5 Conclusions of Law contained in this Order in any present or future: (a) bankruptcy proceeding, or
6 (b) non-criminal proceeding in which the Commission is a party (collectively, "proceeding(s)").
7 They further agree that in any such proceedings, the Findings of Fact and Conclusions of Law
8 contained in this Order may be taken as true and correct and that this Order shall collaterally estop
9 them from re-litigating with the Commission or any other state agency, in any forum, the accuracy
10 of the Findings of Fact and Conclusions of Law contained in this Order. In the event, Respondents
11 Theodore W. Fowler, Shana C. Fowler, or Whispering Creek Investments LLC pursue bankruptcy
12 protection in the future, they further agree that in such bankruptcy proceeding, pursuant to 11 U.S.C.
13 § 523(a)(19), the following circumstances exist:

14 A. The obligations incurred as a result of this Order are a result of the conduct set forth
15 in the Findings of Fact and Conclusions of Law in the Order and are for the violation of Arizona
16 state securities laws, pursuant to 11 U.S.C. § 523(a)(19)(A)(i); and

17 B. This Order constitutes a judgment, order, consent order, or decree entered in a state
18 proceeding pursuant to 11 U.S.C. § 523(a)(19)(B)(i), a settlement agreement entered into by
19 Respondents Theodore W. Fowler, Shana C. Fowler, and Whispering Creek Investments LLC
20 pursuant to 11 U.S.C. § 523(a)(19)(B)(ii), and a court order for damages, fine, penalty, citation,
21 restitution payment, disgorgement payment, attorney fee, cost or other payment owed by
22 Respondents Theodore W. Fowler, Shana C. Fowler, and Whispering Creek Investments LLC
23 pursuant to 11 U.S.C. § 523(a)(19)(B)(iii).

24 8. By consenting to the entry of this Order, Respondents agree not to take any action or
25 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
26 Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual

1 basis. Nothing in this paragraph affects Respondents': (i) testimonial obligations; or (ii) right to take
2 legal or factual positions in litigation or other legal proceedings in which the Commission is not a
3 party.

4 9. While this Order settles this administrative matter between Respondents and the
5 Commission, Respondents understand that this Order does not preclude the Commission from
6 instituting other administrative or civil proceedings based on violations that are not addressed by this
7 Order.

8 10. Respondents Theodore W. Fowler and Whispering Creek Investments LLC
9 understand that this Order does not preclude the Commission from referring this matter to any
10 governmental agency for administrative, civil, or criminal proceedings that may be related to the
11 matters addressed by this Order.

12 11. Respondents Theodore W. Fowler and Whispering Creek Investments LLC
13 understand that this Order does not preclude any other agency or officer of the state of Arizona or its
14 subdivisions from instituting administrative, civil, or criminal proceedings that may be related to
15 matters addressed by this Order.

16 12. Respondents Theodore W. Fowler and Whispering Creek Investments LLC agree that
17 Respondents will not apply to the state of Arizona for registration as a securities dealer or salesman
18 or for licensure as an investment adviser or investment adviser representative until such time as all
19 restitution and penalties under this Order are paid in full.

20 13. Respondents Theodore W. Fowler and Whispering Creek Investments LLC agree that
21 they will not exercise any control over any entity that offers or sells securities or provides investment
22 advisory services within or from Arizona until such time as all restitution and penalties under this
23 Order are paid in full.

24 14. Respondents Theodore W. Fowler and Shana C. Fowler acknowledge that any
25 restitution or penalties imposed by this Order are community obligations.
26

1 15. Respondents consent to the entry of this Order and agree to be fully bound by its terms
2 and conditions.

3 16. Respondents acknowledge and understand that if they fail to comply with the
4 provisions of the order and this consent, the Commission may bring further legal proceedings against
5 them, including application to the superior court for an order of contempt.

6 17. Respondents understand that default shall render Respondents liable to the
7 Commission for its costs of collection, including reasonable attorneys' fees and interest at the
8 maximum legal rate.

9 18. Respondents agree and understand that if Respondents fail to make any payment as
10 required in the Order, any outstanding balance shall be in default and shall be immediately due and
11 payable without notice or demand. Respondents agree and understand that acceptance of any partial
12 or late payment by the Commission is not a waiver of default by the Commission.

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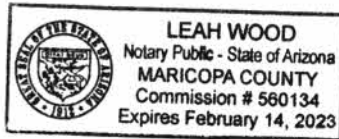
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19. Theodore W. Fowler represents that he is the sole manager of Whispering Creek Investments LLC and has been authorized by Whispering Creek Investments LLC to enter into this Order for and on behalf of it.



Whispering Creek Investments LLC

By: [Signature] (Theodore Fowler)
Its: owner

STATE OF ARIZONA)
) ss
County of)

SUBSCRIBED AND SWORN TO BEFORE me this 16th day of September, 2019.

[Signature]
NOTARY PUBLIC

My commission expires:

2-14-23



[Signature]

Theodore W. Fowler

[Signature]

Shana C. Fowler

STATE OF ARIZONA)
) ss
County of)

SUBSCRIBED AND SWORN TO BEFORE me this 16th day of September, 2019.

[Signature]
NOTARY PUBLIC

My commission expires:

2-14-23

1 SERVICE LIST FOR: Theodore W. Fowler *et al.*

2 Alan Baskin, Esq.

3 Baskin Richards PLC

4 2901 N. Central Avenue, Suite 1150

5 Phoenix, Arizona 85012

6 *Attorney for Theodore W. Fowler, Shana C. Fowler, and Whispering Creek Investments LLC*

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